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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

OMAR CASILLAS,

Defendant and Appellant.

B269841

(Los Angeles County
Super. Ct. No. BA078046)

APPEAL from an order of the Superior Court of Los Angeles County, David Horwitz, Judge. Affirmed.

Sylvia W. Beckham, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Mary Sanchez and Gary A. Lieberman, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * *

Defendant Omar Casillas, also known as Luis Lopez, appeals from the order denying his application under Proposition 47 (The Safe Neighborhoods and Schools Act; Pen. Code, § 1170.18) to have his 1993 felony conviction for possession of a controlled substance reclassified as a misdemeanor. The trial court denied the application, finding that defendant was ineligible for Proposition 47 relief because of his prior disqualifying conviction of attempted murder. On appeal, defendant contends Proposition 47 only precludes reclassification where a defendant had a “prior” disqualifying conviction, and since his attempted murder conviction occurred *after* his drug possession conviction, he is eligible for reclassification. We affirm.

BACKGROUND

In 1993, defendant pled no contest and was convicted of felony possession of cocaine. (Health & Saf. Code, § 11350, subd. (a).) He was sentenced to the low term of 16 months in state prison.

In 2013, defendant was convicted of attempted murder (Pen. Code, §§ 664, 187), a “super strike” for which he received a sentence of 29 years. (We previously denied without prejudice defendant’s request to take judicial notice of the court documents reflecting the date of his attempted murder conviction pending proof that the documents were presented to the trial court hearing the petition. Since the record demonstrates the trial court was aware of the Kern County case number in which defendant was convicted of attempted murder, we now grant the request for judicial notice.)

Defendant filed an application for reclassification under Proposition 47, seeking to have his conviction under Health and

Safety Code section 11350 designated a misdemeanor. The People opposed defendant's application on the ground that defendant was ineligible for reclassification because he had been convicted of a super strike.

On January 6, 2016, the trial court denied the application, finding that defendant was not eligible for Proposition 47 reclassification because of the prior conviction of attempted murder. This timely appeal followed.

DISCUSSION

Proposition 47 was enacted by voters, and took effect in November 2014. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089 (*Rivera*).) Proposition 47 reduced the penalties for certain drug- and theft-related offenses and reclassified those offenses as misdemeanors rather than felonies. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 879; *Rivera*, at p. 1091.) It also added section 1170.18 to the Penal Code, which allows those previously convicted of felonies which were reclassified as misdemeanors under Proposition 47, to petition the court to have their felony convictions designated as misdemeanors. (*Rivera*, at pp. 1091-1092.) The text of Proposition 47, provides that "[t]his act shall be liberally construed to effectuate its purposes." (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 18, p. 74.) Among its stated purposes is to "[e]nsure that people convicted of murder, rape, and child molestation will not benefit from this act." (*Id.*, § 3, p. 70.) The act also sought "to ensure that prison spending is focused on violent and serious offenses [and] to maximize alternatives for nonserious, nonviolent crime" (*Id.*, § 2, p. 70.)

As is relevant here, Penal Code section 1170.18 provides that: "(f) A person who has completed his or her sentence for a

conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors. [¶] (g) If the application satisfies the criteria in subdivision (f), the court shall designate the felony offense or offenses as a misdemeanor.” However, section 1170.18, subdivision (i) expressly disqualifies certain offenders from resentencing and reclassification, providing that “this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.”

It is undisputed that defendant suffered a super strike conviction specified in “clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667” in 2013, before he sought reclassification of his 1993 conviction. (See Pen. Code, § 667, subd. (e)(2)(C)(iv)(IV).) The parties dispute whether Penal Code section 1170.18, subdivision (i)’s exemption of those with certain “prior convictions” means prior to defendant’s 1993 conviction, or prior to his application for reclassification.

Matters of statutory interpretation are questions of law subject to de novo review. (*People v. Zeigler* (2012) 211 Cal.App.4th 638, 650.)

We previously decided the same question presented in this appeal, finding “the ‘prior conviction’ ineligibility for relief means a disqualifying conviction that occurred any time before the filing of the application for Proposition 47 relief.” (*People v. Zamarripa*

(2016) 247 Cal.App.4th 1179, 1184, review denied Sept. 21, 2016; accord, *People v. Montgomery* (2016) 247 Cal.App.4th 1385, 1392 [“We conclude section 1170.18 precludes redesignation for anyone who has a conviction for the enumerated excluded crimes prior to the time of the application for such relief.”].) Defendant has not persuaded us that these authorities were wrongly decided.

DISPOSITION

The order denying the application is affirmed.

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.